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SENATE BILL 269

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY
John C. Ryan

AN ACT

RELATING TO ETHICS; ENACTING THE STATE BIPARTISAN ETHICS
COMMISSION ACT; CREATING THE STATE BIPARTISAN ETHICS
COMMISSION; PROVIDING POWERS AND DUTIES; ALLOWING ANNUAL ETHICS
TRAINING AND THE PUBLICATION OF ETHICS GUIDES; REQUIRING THE
DEVELOPMENT OF A PROPOSED ETHICS CODE FOR THE EXECUTIVE BRANCH;
GRANTING SUBPOENA POWER THROUGH THE ATTORNEY GENERAL; ALLOWING
ISSUANCE OF ADVISORY OPINIONS RELATED TO CERTAIN ETHICS
VIOLATIONS; PROVIDING FOR THE FILING OF COMPLAINTS AGAINST
STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT CONTRACTORS AND
LOBBYISTS FOR CERTAIN ETHICS VIOLATIONS; ESTABLISHING
INVESTIGATIONS OF COMPLAINTS FOR CERTAIN ETHICS VIOLATIONS;
PROVIDING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
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1 "State Bipartisan Ethics Commission Act".

2 Section 2. DEFINITIONS.--As used in the State Bipartisan
3 Ethics Commission Act:

4 A. "commission" means the state bipartisan ethics
5 commission;

6 B. "commissioner" means a person appointed to the
7 state bipartisan ethics commission;

8 C. "ethics violation" means any action that amounts
9 to a violation of the Gift Act, the Governmental Conduct Act,
10 the Procurement Code, the Lobbyist Regulation Act, the
11 Financial Disclosure Act or Chapter 1, Article 19 NMSA 1978;

12 D. "government contractor" means a person who has a
13 contract with a state agency pursuant to the Procurement Code.
14 "Government contractor" also includes any person who has
15 submitted a competitive sealed proposal or competitive sealed
16 bid for a contract with a state agency;

17 E. "legislative body" means the house of
18 representatives or the senate;

19 F. "lobbying" means attempting to influence:

20 (1) a decision related to any matter to be
21 considered or being considered by the legislative branch of
22 state government or any legislative committee or to any
23 legislative matter requiring action by the governor or awaiting
24 action by the governor; or

25 (2) an official action;

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1 G. "lobbyist" means a person who is compensated for
2 the specific purpose of lobbying; who is designated by an
3 interest group or organization to represent it on a substantial
4 or regular basis for the purpose of lobbying; or who, in the
5 course of the person's employment, is engaged in lobbying on a
6 substantial or regular basis. "Lobbyist" does not include:

7 (1) a person who appears on the person's own
8 behalf in connection with legislation or an official action;

9 (2) an elected or appointed officer of the
10 state, a political subdivision of the state or an Indian
11 nation, tribe or pueblo who is acting in the officer's official
12 capacity;

13 (3) an employee of the state or a political
14 subdivision of the state, specifically designated by an elected
15 or appointed officer, who appears before a legislative
16 committee or in a rulemaking proceeding only to explain the
17 effect of legislation or a rule on that employee's agency or
18 political subdivision; provided that the elected or appointed
19 officer keeps the designation for public inspection and files
20 it with the secretary of state;

21 (4) a designated member of the staff of an
22 elected state official; provided that the elected state
23 official keeps the designation for public inspection and files
24 it with the secretary of state;

25 (5) a legislator or legislative staff member;

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1 (6) a witness called by a legislative
2 committee or administrative agency to appear before it in
3 connection with legislation or an official action;

4 (7) a person who provides only oral or written
5 public testimony in connection with a legislative committee or
6 in a rulemaking proceeding and whose name and the interest on
7 behalf of which the person testifies have been clearly and
8 publicly identified; or

9 (8) a publisher, owner or employee of the
10 print media, radio or television, while gathering or
11 disseminating news or editorial comment to the general public
12 in the ordinary course of business;

13 H. "official action" means an action or nonaction
14 of a state official or state agency, board or commission acting
15 in a rulemaking proceeding;

16 I. "respondent" means a state official, state
17 employee, government contractor or lobbyist who is the subject
18 of a complaint filed with the commission;

19 J. "state agency" means any department, commission,
20 council, board, committee, institution, agency, government
21 corporation, educational institution or official of the
22 executive, legislative or judicial branch of government of the
23 state;

24 K. "state employee" means an employee of the
25 executive, legislative or judicial branch of the state; and

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1 L. "state official" means a person elected or
2 appointed to an office of the executive, judicial or
3 legislative branch of the state.

4 Section 3. STATE BIPARTISAN ETHICS COMMISSION CREATED--
5 MEMBERSHIP--TERMS--REMOVAL.--

6 A. The "state bipartisan ethics commission" is
7 created as an adjunct agency. The commission consists of the
8 following eight commissioners:

- 9 (1) two commissioners appointed by the
10 president pro tempore of the senate;
- 11 (2) two commissioners appointed by the
12 minority leader of the senate;
- 13 (3) two commissioners appointed by the speaker
14 of the house of representatives; and
- 15 (4) two commissioners appointed by the
16 minority leader of the house of representatives.

17 B. Appointments shall be made in a manner that
18 meets the following requirements:

- 19 (1) all commissioners shall be residents of
20 New Mexico; and
- 21 (2) the appointing authorities shall give due
22 consideration to achieving geographical representation from
23 across the state.

24 C. Commissioners shall be appointed for staggered
25 terms of four years. Upon initial appointment of the

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1 commission, the commissioners shall draw lots so that four
2 commissioners representing both chambers and both parties serve
3 an initial term of three years and four commissioners
4 representing both chambers and both parties serve an initial
5 term of four years; thereafter, all commissioners will serve
6 four-year terms. A person shall not serve as a commissioner
7 for more than two consecutive terms.

8 D. The commission shall select a chair, vice chair
9 and other officers it deems necessary.

10 E. Six commissioners constitute a quorum for the
11 transaction of business. No action may be taken by the
12 commission unless at least six members concur.

13 F. A vacancy on the commission shall be filled by
14 appointment of the appointing authority for that commissioner's
15 position for the remainder of the unexpired term. A
16 commissioner may only be removed for incompetence, neglect of
17 duty or malfeasance in office. A proceeding for the removal of
18 a commissioner may be commenced by the commission or by the
19 attorney general upon the request of the commission. The
20 supreme court of the state of New Mexico has exclusive
21 jurisdiction over proceedings to remove commissioners, and its
22 decision shall be final. A commissioner shall be given notice
23 of hearing and an opportunity to be heard before the
24 commissioner is removed.

25 G. During a commissioner's service, a commissioner

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1 shall not:

2 (1) hold or seek an elective public office, an
3 appointed public position or an office in a political party; or

4 (2) be a state employee, government contractor
5 or lobbyist.

6 H. Commissioners shall disqualify themselves from a
7 commission proceeding that involves the appointing authority
8 who appointed the commissioner to the commission or when a
9 commissioner has a conflict of interest. Commissioners who
10 disqualify themselves shall state the reason for the
11 disqualification. If the propriety of a commissioner's
12 participation in a particular matter is questioned due to a
13 conflict of interest, the commission may disqualify that
14 commissioner from participation in a commission proceeding. A
15 disqualified commissioner shall not participate in any
16 proceedings with reference to the matter from which the
17 commissioner is disqualified, and the commissioner shall be
18 excused from that portion of any meeting at which the matter is
19 discussed.

20 I. For a period of one calendar year following the
21 expiration of a commissioner's term or following the
22 resignation or removal of the commissioner, the commissioner
23 shall not:

24 (1) hold or seek an elective public office, an
25 appointed public position or public employment;

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1 (2) represent a respondent, unless appearing
2 on the commissioner's own behalf; or

3 (3) accept employment or otherwise provide
4 services to a person or entity that is a respondent, unless the
5 commissioner accepted employment or provided services to the
6 person or entity prior to the filing of a complaint against the
7 person or entity.

8 J. Commissioners are entitled to receive per diem
9 and mileage as provided in the Per Diem and Mileage Act and
10 shall receive no other compensation, perquisite or allowance.

11 K. The commission shall meet as necessary to carry
12 out its duties pursuant to the State Bipartisan Ethics
13 Commission Act.

14 Section 4. COMMISSION--POWERS--DUTIES.--

15 A. The commission shall:

16 (1) receive and investigate complaints
17 alleging ethics violations against state officials, state
18 employees, government contractors and lobbyists;

19 (2) report findings of probable cause that a
20 respondent's conduct constituted an ethics violation to the
21 respondent's appointing authority, employer, appropriate state
22 agency or appropriate legislative body;

23 (3) compile, maintain and provide public
24 access to an index of all advisory opinions, complaints and
25 reports required to be made public pursuant to the State

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1 Bipartisan Ethics Commission Act;

2 (4) draft a proposed code of ethics for all
3 state officials and state employees of the executive branch and
4 submit the proposed code to each elected state official of the
5 executive branch for adoption;

6 (5) develop, adopt and promulgate all
7 procedural rules necessary to implement and administer the
8 provisions of the State Bipartisan Ethics Commission Act,
9 including rules of procedure for investigations conducted by
10 the commission;

11 (6) employ an executive director;

12 (7) submit an annual report of its activities,
13 including any recommendations regarding state ethics laws or
14 the scope of its powers and duties, in December of each year to
15 the governor, the legislature and the chief justice of the
16 supreme court; and

17 (8) promulgate rules for the recusal of
18 members to avoid the appearance of impropriety and conflicts of
19 interest.

20 B. The commission may:

21 (1) initiate complaints alleging ethics
22 violations against state officials, state employees, government
23 contractors and lobbyists;

24 (2) issue public reprimands or censures or
25 recommend disciplinary actions in accordance with the

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1 provisions of the State Bipartisan Ethics Commission Act for
2 ethics violations committed by state officials of the executive
3 branch and state employees;

4 (3) pursuant to governing court rules and the
5 State Bipartisan Ethics Commission Act, request that the
6 attorney general issue subpoenas as necessary to require the
7 attendance of witnesses and the production of accounts, books,
8 papers, records and other documents relevant to an
9 investigation conducted by the commission;

10 (4) issue advisory opinions to state
11 officials, state employees, government contractors and
12 lobbyists in accordance with the provisions of the State
13 Bipartisan Ethics Commission Act;

14 (5) compile, adopt, publish and provide to all
15 state officials, state employees, government contractors and
16 lobbyists an ethics guide that clearly and plainly explains the
17 ethics requirements set forth in state law;

18 (6) compile, adopt, publish and provide to all
19 state officials, state employees, government contractors and
20 lobbyists a business ethics guide that clearly and plainly
21 explains the ethics requirements set forth in state law as they
22 relate to conducting business with the state;

23 (7) offer annual ethics training to all state
24 officials, state employees, government contractors and
25 lobbyists; and

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1 (8) contract for the provisions of goods and
2 services.

3 Section 5. EXECUTIVE DIRECTOR--DUTIES--EMPLOYMENT.--

4 A. The executive director of the commission shall:

5 (1) be employed by, report directly to and
6 serve at the pleasure of the commission;

7 (2) perform all investigations on behalf of
8 the commission;

9 (3) bring complaints and investigation results
10 before the commission for consideration;

11 (4) prepare an annual budget for the
12 commission and submit it to the commission for approval; and

13 (5) make recommendations to the commission of
14 proposed rules or legislative changes needed to provide better
15 administration of the State Bipartisan Ethics Commission Act.

16 B. The executive director may hire a general
17 counsel for the commission and all other personnel as may be
18 necessary to carry out the responsibilities of the commission.

19 C. The executive director of the commission may
20 administer oaths and take depositions to the same extent and
21 subject to the same limitations as would apply if the
22 deposition were held pursuant to the discovery rules in a civil
23 action in the district court.

24 D. For a period of one calendar year immediately
25 following the executive director's employment with the

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1 commission, the executive director shall not:

2 (1) hold or seek an elective public office, an
3 appointed public position or public employment;

4 (2) represent a respondent, unless appearing
5 on the executive director's own behalf; or

6 (3) accept employment or otherwise provide
7 services to a person or entity that is a respondent, unless the
8 executive director accepted employment or provided services to
9 the person or entity prior to the filing of a complaint against
10 the person or entity.

11 Section 6. COMMISSION--ADVISORY OPINIONS.--

12 A. The commission may issue an advisory opinion to
13 a state official, state employee, government contractor or
14 lobbyist on matters relating to a specific set of circumstances
15 involving ethics violations. Unless amended or revoked, an
16 advisory opinion issued by the commission shall be binding on
17 the commission in any subsequent commission proceedings
18 concerning the person who requested the opinion; provided that
19 the person acted in good faith and in reliance upon the
20 opinion.

21 B. The commission shall promulgate rules for
22 issuing advisory opinions; provided that:

23 (1) advisory opinions shall be requested in
24 writing and identify a specific set of circumstances involving
25 an ethics issue;

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1 (2) all requests to the commission for
2 advisory opinions shall be confidential; and

3 (3) the commission may publish an advisory
4 opinion after omitting the name of the requesting state
5 official, state employee, government contractor or lobbyist.

6 Section 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--
7 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL
8 REFERRAL REQUIRED.--

9 A. A complaint of an alleged ethics violation
10 committed by a state official, state employee, government
11 contractor or lobbyist may be:

12 (1) filed with the commission by a person who
13 has actual knowledge of an alleged ethics violation; or

14 (2) initiated by the commission upon receipt
15 of evidence deemed sufficient by the commission of an alleged
16 ethics violation.

17 B. A person who files a complaint with the
18 commission shall sign the complaint under penalty of false
19 statement and set forth in detail the specific charges against
20 the state official, state employee, government contractor or
21 lobbyist and the factual allegations that support the charges.
22 Together with the complaint, a person shall submit to the
23 commission any evidence that the person has that supports the
24 complaint. Evidence may include documents, records and the
25 names of witnesses. The commission may prescribe the forms on

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1 which complaints are to be filed.

2 C. The chair of the commission shall sign a
3 complaint initiated by the commission, and the complaint shall
4 set forth in detail the specific charges against the state
5 official, state employee, government contractor or lobbyist and
6 the factual allegations that support the charges.

7 D. Upon receipt of a complaint filed or initiated
8 pursuant to this section, the executive director of the
9 commission shall examine the complaint and make an initial
10 determination as to whether the conduct alleged in the
11 complaint is within the jurisdiction of the commission and
12 warrants investigation. The executive director shall bring all
13 complaints before the commission and make recommendations to
14 the commission regarding whether to proceed with investigations
15 of the complaints.

16 E. The commission may dismiss complaints that are
17 frivolous, unfounded or outside the jurisdiction of the
18 commission. If the commission determines that there is
19 sufficient cause to proceed with the investigation of a
20 complaint, the executive director shall initiate an
21 investigation to determine whether probable cause may exist to
22 believe that the respondent's alleged conduct constituted an
23 ethics violation. As soon as practicable, the executive
24 director shall notify the person who filed the complaint and
25 the respondent of the disposition of the complaint. The

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1 executive director shall also notify the respondent of the
2 general nature of the complaint and the investigation.

3 F. As part of the investigation, the executive
4 director may interview witnesses and examine books, documents,
5 records and papers reasonably related to the complaint. All
6 testimony in an investigation shall be under oath, and the
7 respondent shall have the right to be represented by legal
8 counsel. If the executive director determines that the
9 testimony of any person or the production of books, documents,
10 records or papers is required in the investigation, the
11 executive director shall request the commission to request the
12 attorney general to issue the appropriate subpoena.

13 G. The commission may refer to the attorney general
14 a confidential request to compel the production of books,
15 records and papers pertinent to the investigation of a
16 complaint conducted pursuant to this section. The attorney
17 general may issue a subpoena that shall state with reasonable
18 certainty the nature of the investigation, the nature of the
19 information required to be produced, the time and place where
20 information shall be produced and the consequences of failure
21 to obey the subpoena. After service of a subpoena upon a
22 person, if the person neglects or refuses to comply with the
23 subpoena, the attorney general may apply to the district court
24 where the custodian of the documents is located for an order
25 compelling compliance. Any request for a subpoena pursuant to

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1 this section, the issuance of a subpoena and compliance or
2 noncompliance with a subpoena shall be kept confidential.

3 H. The executive director shall present a written
4 report of the investigation to the commission. The respondent
5 and the respondent's legal counsel may attend and participate
6 in the meeting, and the executive director shall provide
7 reasonable notice to the respondent in writing of the date,
8 time and place of the meeting. Notwithstanding the provisions
9 of the Open Meetings Act, meetings of the commission held for
10 the purpose of an investigation conducted pursuant to this
11 section are closed to the public.

12 I. If the commission finds that, based on the facts
13 in the investigation report and the facts alleged in the
14 complaint, probable cause exists to believe that the
15 respondent's alleged conduct constituted an ethics violation,
16 the commission shall issue a written report of its findings.
17 The report shall include findings of fact and conclusions of
18 law. If the respondent is a state official of the executive
19 branch or state employee of the executive branch, the written
20 report may include a public reprimand or censure regarding the
21 respondent's behavior or recommendations for disciplinary
22 action against the respondent.

23 J. The commission shall publicly disclose a report
24 issued pursuant to Subsection I of this section. The
25 commission shall also transmit the report and provide all

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1 evidence collected during its investigation to the respondent,
2 the attorney general and the:

3 (1) respondent's appointing authority if the
4 respondent is a state official appointed to an office of the
5 executive branch;

6 (2) appropriate legislative body, in the care
7 of the legislative council service, if the respondent is a
8 legislator;

9 (3) judicial standards commission if the
10 respondent is a judge or a justice;

11 (4) appropriate state agency if the respondent
12 is a state employee;

13 (5) respondent's employer if the respondent is
14 a lobbyist; or

15 (6) state agency with which the respondent has
16 a government contract if the respondent is a government
17 contractor.

18 K. If the commission finds that, based on the facts
19 in the investigation report and the facts alleged in the
20 complaint, probable cause does not exist to believe that the
21 respondent's alleged conduct constituted an ethics violation,
22 the commission shall dismiss the complaint and provide a report
23 of its finding in writing to the respondent no later than five
24 days after the finding is made. The report shall include
25 findings of fact and conclusions of law. A commission report

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1 issued pursuant to this subsection shall not be public except
2 upon the request of the respondent.

3 Section 8. COMMISSION INVESTIGATIONS--CONFIDENTIALITY.--

4 All complaints, files, records and communications collected by
5 the commission that pertain to investigations of ethics
6 violations are confidential and are not subject to the
7 provisions of the Inspection of Public Records Act. The
8 commission or any person who receives the evidence collected in
9 a commission investigation pursuant to Subsection G of Section
10 7 of the State Bipartisan Ethics Commission Act shall not
11 disclose the complaints, files, records and communications
12 unless:

- 13 A. disclosure is required pursuant to the
- 14 provisions of the State Bipartisan Ethics Commission Act;
- 15 B. they are offered into evidence at any judicial,
- 16 legislative or administrative proceeding;
- 17 C. disclosure is required by law or ordered by a
- 18 court; or
- 19 D. the respondent files with the commission a
- 20 written waiver of confidentiality.

21 Section 9. CONFIDENTIALITY--PENALTY.--

22 A. A person who discloses any confidential
23 complaints, files, records or communications in violation of
24 Section 8 of the State Bipartisan Ethics Commission Act is
25 guilty of a misdemeanor and upon conviction shall be punished

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1 by a fine of not more than one thousand dollars (\$1,000) or by
2 imprisonment for not more than one year or both.

3 B. In addition to a penalty imposed pursuant to
4 Subsection A of this section, the court may impose a civil
5 penalty not to exceed ten thousand dollars (\$10,000) for each
6 violation of Section 8 of the State Bipartisan Ethics
7 Commission Act.

8 Section 10. CRIMINAL VIOLATIONS--REFERRAL REQUIRED.--If
9 the commission finds at any time that the respondent's conduct
10 may amount to a criminal violation of state law, the commission
11 shall immediately refer the matter to the attorney general or
12 an appropriate district attorney. The commission shall provide
13 the attorney general or district attorney with all evidence
14 collected during its investigation that may be used in a
15 criminal proceeding. Nothing in this subsection shall prevent
16 the commission from taking any action otherwise provided in the
17 State Bipartisan Ethics Commission Act.

18 Section 11. COMPLAINTS AND INVESTIGATIONS--TIME
19 LIMITATIONS.--

20 A. If the commission has not scheduled a meeting
21 concerning the disposition of a complaint within ninety days
22 after the complaint is received or initiated by the commission
23 or has not disposed of the complaint within twelve months after
24 the complaint was received or initiated, the executive director
25 shall, as soon as practicable, report to the commission the

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1 progress and status of the investigation. The commission may
2 dismiss the complaint or instruct the executive director to
3 continue the investigation of the complaint. Unless the
4 commission dismisses the complaint, the executive director
5 shall report to the commission every six months thereafter on
6 the progress and status of the investigation.

7 B. Upon a dismissal or decision to continue an
8 investigation of a complaint pursuant to this section, the
9 commission shall notify the respondent in writing of its
10 action. The commission shall not publicly disclose its action
11 except upon the request of the respondent.

12 Section 12. PROHIBITED ACTIONS.--

13 A. A person shall not take or threaten to take any
14 retaliatory, disciplinary or other adverse action against
15 another person who in good faith:

16 (1) files a complaint with the commission
17 alleging an ethics violation against a state official, state
18 employee or lobbyist; or

19 (2) provides testimony, records, reports or
20 other information to the commission during an investigation
21 conducted pursuant to the State Bipartisan Ethics Commission
22 Act.

23 B. Nothing in the State Bipartisan Ethics
24 Commission Act precludes civil actions or criminal sanctions
25 for libel, slander or other civil or criminal claims against a

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1 person who files a false claim under that act.

2 Section 13. TEMPORARY PROVISION--REPORT ON EXTENSION OF
3 STATE BIPARTISAN ETHICS COMMISSION JURISDICTION TO LOCAL
4 GOVERNMENTS.--By January 1, 2011, the state bipartisan ethics
5 commission shall submit a report to the governor, the
6 legislature and the chief justice of the supreme court
7 regarding the extension of state bipartisan ethics commission
8 jurisdiction to elected and appointed officials and employees
9 of counties, municipalities and school districts. The report
10 shall include and make recommendations on:

11 A. a detailed plan formulated by the commission for
12 implementation of an extension of its jurisdiction, including a
13 proposed timeline;

14 B. the estimated number of additional employees and
15 the amount and type of resources needed by the state bipartisan
16 ethics commission to carry out its powers and duties if its
17 jurisdiction were extended;

18 C. all estimated budget increases needed and the
19 estimated annual budget for the state bipartisan ethics
20 commission if its jurisdiction were extended; and

21 D. any changes that are needed to existing law.

22 Section 14. APPROPRIATION.--Five hundred thousand dollars
23 (\$500,000) is appropriated from the general fund to the state
24 bipartisan ethics commission for expenditure in fiscal year
25 2010 to carry out the provisions of the State Bipartisan Ethics
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1 Commission Act. Any unexpended or unencumbered balance
2 remaining at the end of fiscal year 2010 shall revert to the
3 general fund.

4 Section 15. EFFECTIVE DATES.--

5 A. The effective date of the provisions of Sections
6 1 through 5, 8, 9 and 12 through 14 of this act is July 1,
7 2009.

8 B. The effective date of the provisions of Sections
9 6, 7, 10 and 11 of this act is January 1, 2010.

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